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7
8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. R-2113

11 DON CARLO M. TRINIDAD
12 171 Regent Drive
13 Pittsburg CA 94565

A C C U S A T I O N

14 Respiratory Care Practitioner License 25143

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs.

22 2. On or about May 3, 2006, the Respiratory Care Board issued Respiratory
23 Care Practitioner License Number 25143 to Don Carlo M. Trinidad (Respondent). The
24 Respiratory Care Practitioner License was in full force and effect at all times relevant to the
25 charges brought herein and will expire on May 31, 2009, unless renewed.

26 DISCIPLINARY HISTORY

27 3. On or about November 16, 2007, the Board filed a Petition for Interim
28 Suspension Order pursuant to Business & Professions code section 494 against respondent's

1 license. On or about November 14, 2007, respondent agreed to a voluntary suspension of his
2 license to practice respiratory care. On or about November 20, 2007, Administrative Law Judge
3 Michael C. Cohn signed an Order suspending respondent's license pending resolution of the
4 administrative case.

5 JURISDICTION

6 4. This Accusation is brought before the Respiratory Care Board (Board),
7 Department of Consumer Affairs, under the authority of the following laws. All section
8 references are to the Business and Professions Code unless otherwise indicated.

9 5. Section 3710 of the Code states: "The Respiratory Care Board of
10 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
11 8.3, the Respiratory Care Practice Act]."

12 6. Section 3718 of the Code states: "The board shall issue, deny, suspend,
13 and revoke licenses to practice respiratory care as provided in this chapter."

14 7. Section 3750 of the Code states:

15 "The board may order the denial, suspension or revocation of, or the imposition of
16 probationary conditions upon, a license issued under this chapter, for any of the following
17 causes:

18 "(g) Conviction of a violation of any of the provisions of this chapter or of any
19 provision of Division 2 (commencing with Section 500), or violating, or attempting to
20 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
21 violate any provision or term of this chapter or of any provision of Division 2
22 (commencing with Section 500)."

23 "(j) The commission of any fraudulent, dishonest, or corrupt act which is
24 substantially related to the qualifications, functions, or duties of a respiratory care
25 practitioner."

26 8. Section 3750.5 of the Code states:

27 "In addition to any other grounds specified in this chapter, the board may deny,
28 suspend, or revoke the license of any applicant or license holder who has done any of the

1 following:

2 "(a) Obtained or possessed in violation of law, or except as directed by a licensed
3 physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or
4 administered to another, any controlled substances as defined in Division 10 (commencing with
5 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7
6 (commencing with section 4210) of Chapter 9 of this code.

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8 "(b) Used any controlled substance as defined in Division 10 (commencing with
9 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7
10 (commencing with section 4210) of Chapter 9 of this code."

11 9. Section 3755 of the Code states:

12 "The board may take action against any respiratory care practitioner who is
13 charged with unprofessional conduct in administering, or attempting to administer, direct
14 or indirect respiratory care. Unprofessional conduct includes, but is not limited to,
15 repeated acts of clearly administering directly or indirectly inappropriate or unsafe
16 respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or
17 monitoring techniques, and violation of any provision of Section 3750. The board may
18 determine unprofessional conduct involving any and all aspects of respiratory care
19 performed by anyone licensed as a respiratory care practitioner."

20 10. California Code of Regulations, title 16, section 1399.370, states:

21 "For the purposes of denial, suspension, or revocation of a license, a crime or act
22 shall be considered to be substantially related to the qualifications, functions or duties of
23 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
24 perform the functions authorized by his or her license or in a manner inconsistent with the
25 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
26 those involving the following:

27 "(a) Violating or attempting to violate, directly or indirectly, or assisting or
28 abetting the violation of or conspiring to violate any provision or term of the Act."

1 COST RECOVERY

2 11. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the board,
4 the board or the administrative law judge may direct any practitioner or applicant found to have
5 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
6 investigation and prosecution of the case."

7 12. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
9 include attorney general or other prosecuting attorney fees, expert witness fees, and other
10 administrative, filing, and service fees."

11 13. Section 3753.1 of the Code states:

12 "(a) An administrative disciplinary decision imposing terms of probation may
13 include, among other things, a requirement that the licensee-probationer pay the monetary costs
14 associated with monitoring the probation. "

15 FIRST CAUSE FOR DISCIPLINE

16 (Possession and Use of a controlled substance)

17 14. Respondent is subject to disciplinary action under sections 3750.5(a) and
18 3750.5(b) in that he used a needle and syringe to take patients' medications for personal use. The
19 circumstances are as follows:

20 15. On or about September 8, 9, and 13, 2007, respondent was employed as a
21 respiratory care practitioner on a contract basis at Alameda County Medical Center (ACMC). On
22 those dates, an Intensive Care Unit (ICU) nurse witnessed respondent, holding a needle and
23 syringe, entering patient rooms. When the nurse entered the patient room, she observed
24 respondent using a needle and syringe to withdraw Fentanyl¹, a controlled substance, from the
25

26 1. Fentanyl citrate is a potent narcotic analgesic. It is a dangerous drug as defined in
27 section 4022 of the Code, and a schedule II controlled substance and narcotic as defined by
28 section 11055, subdivision (c)(8), of the Health and Safety Code.

1 patient's intravenous bag. The incidents were reported to R.W.,² the respiratory department
2 manager.

3 16. On September 13, 2007, R.W. met with respondent to discuss the
4 allegations. Respondent admitted that he had stolen medication from patients, and stated that he
5 had a drug abuse problem. Based on respondent's actions and admission, R.W. terminated
6 respondent's employment at ACMC. R.W. telephoned the Board and notified L.Z, Enforcement
7 Program Manager, of respondent's actions.

8 17. On September 17, 2007, L.Z. spoke on the telephone with an individual
9 who identified himself as "Mark," and stated that he worked at a Los Angeles county facility
10 through "Maximum," a registry company. He stated that in the prior week, he was terminated
11 from employment due to stealing patient medication. He wanted to know what would happen to
12 his license. Since the facts sounded similar to what R.W. had reported, L.Z. asked the caller if he
13 was Respondent. Respondent admitted that it was he, and apologized for being deceptive but
14 stated that he was scared to reveal his true name and circumstances.

15 18. Respondent admitted that he had taken patient medications while working
16 as a respiratory care practitioner. L.Z. told him that the Board would send him a declaration form
17 and ask him to describe what had happened, in writing.

18 19. On or about September 26, 2007, Respondent faxed two pages to the
19 Board, consisting of a cover sheet and a one page "Factual Statement in response to allegation."
20 In his signed statement, he stated that "I admit to the allegation of taking Fentanyl via a syringe
21 on a couple of occasions. I also admit to having had an addiction which started after being
22 placed on strong narcotics as a result of a surgery that took place May 2007."

23 20. Respondent's license is subject to discipline in that while he was
24 employed as a respiratory care practitioner, he used a needle and syringe to remove Fentanyl, a
25 controlled substance, for personal use in violation of code sections 3750.5(a) [possession of a
26 controlled substance] and 3750.5(b) [use of a controlled substance.]

27
28 2. Initials are used to protect confidentiality. Full names will be disclosed in discovery.

1 SECOND CAUSE FOR DISCIPLINE

2 (Dishonest Act)

3 21. Paragraphs 15 through 19 are incorporated herein.

4 22. Respondent is subject to disciplinary action under section 3750(j) in that
5 his act of taking Fentanyl, a controlled substance, from patients' intravenous bags for his
6 personal use is a dishonest act and is cause for discipline.

7 THIRD CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

9 23. Paragraphs 15 through 19 are incorporated herein.

10 24. Respondent's act of taking Fentanyl, a controlled substance, from patients'
11 intravenous bags for his personal use is a violation of code section 3755 [unprofessional conduct]
12 and constitutes cause for discipline.

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

16 1. Revoking or suspending Respiratory Care Practitioner License Number
17 25143, issued to Don Carlo M. Trinidad.

18 2. Ordering Don Carlo M. Trinidad to pay the Respiratory Care Board the
19 costs of the investigation and enforcement of this case, and if placed on probation, the costs of
20 probation monitoring;

21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: November 30, 2007.

23
24 Original signed by Liane Zimmerman for:
25 STEPHANIE NUNEZ
26 Executive Officer
27 Respiratory Care Board of California
28 Department of Consumer Affairs
State of California
Complainant